

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTIETH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 25353 of 2003

Between:

Md. Toufiq S/o Late Md. Ismail,

Aged: about 46 years, Occup: Driver, E.No.63020,

R/o 3-8-385, Panjasha, Adilabad

..... PETITIONER

AND

1. APSRTC, Reptd, by its Chairman and Managing Director, Musheerabad, Hyderabad
2. APSRTC, Reptd. by its Regional Manager, Adilabad Region, Adilabad
- 3 The Depot Manager, APSRTC Bus Depot, Adilabad , District Adilabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ or direction particularly one in the nature Writ of Mandamus declaring the action of the respondents in not adding the notional increments for the out of service period ie., 10-1-79 to 30-9-1996 and not arranging the back wages for the above period as illegal, unjust and in violation of Article 14, 16 and 21 of the Constitution of India and consequently direct respondents to re-fix the pay by adding the notional increments for the out of service period along with the back wages and its benefits in the interest of justice and fair play.

Counsel for the Petitioner:MR.V.NARASIMHA GOUD

Counsel for the Respondent Nos 1 to 3.: SMT.G.JYOTHI KIRAN

The Court Made the Following :

The writ petition is filed seeking the benefits of notional increments for the period the petitioner was out of service i.e., from 10-01-1979 to 30-09-1996 and for denial of back wages for the said period.

The petitioner joined the service of the A.P.S.R.T.C. in the year 1976 as Driver. He was removed by the order dated 10-01-1979 on the ground of involvement in an accident. The departmental appeals having been rejected, he filed W.P.No. 7893 of 1985 in this court. The writ petition was allowed by the order dated 31-08-1988. A learned Single Judge of this Court concluded that as the criminal case initiated against the petitioner for the same offence under Section 304-A IPC ended in the petitioner's acquittal on merits, his removal from service for the same incident was unsustainable. As the petitioner was evidently acquitted on merits, the order of dismissal was unsustainable, held this court, while allowing the writ petition by the judgment dated 31-08-1988.

As against the said judgment, the respondent-Corporation preferred W.A.No.590 of 1989. The writ appeal was dismissed by the judgment dated 06-02-1996. There is a clear pronouncement by this court in the judgment *inter partes* that the disciplinary inquiry held against the petitioner culminating in the order of his removal from service by the order dated 10-01-1979 is clearly unsustainable. The order of removal, therefore, must be considered as *ab initio void*. Without reinstating the petitioner even after the dismissal of the writ

appeal, it would appear the respondents-Corporation was procrastinating. However, the petitioner was eventually reinstated into service on 30-09-1996.

Despite his reinstatement into service pursuant to the judgment in the writ petition, confirmed in the writ appeal, the respondents have denied both back wages and notional increments to the petitioner for the period he was out of service. After representations, the petitioner got issued an advocate's notice dated 10-11-2003 asserting a claim for back wages and notional increments. The 3rd respondent in response to the petitioner's representation and legal notice stated that the petitioner was reinstated into service with effect from 30-09-1996 and the order of this court does not express that the petitioner is eligible for notional increments and that, therefore, his pay had been re-fixed in the revised pay scales from time to time without notional increments for the period he was out of service. In the light of the rejection of his claim by the 3rd respondent's proceedings dated 18-11-2003, the writ petition has been filed for appropriate relief.

The counter affidavit filed on behalf of the respondents is a reiteration of what has been stated by the 3rd respondent in the proceedings dated 18-11-2003. Reiterating the same contentions the learned standing counsel for the respondents urges that the petitioner is not entitled to any of the reliefs he seeks in the writ petition. Reliance is placed on the decision of the Supreme Court in *A.P.S.R.T.C. vs. S. NARSAGOUD* ⁽¹⁾. In the matter that fell for consideration before the Supreme Court in the case cited supra, a Conductor of R.T.C. had remained absent on repeated occasions unauthorisedly. After a due process of departmental inquiry, he was removed from service. He raised a dispute under Section 2(A)(2) of the Industrial Disputes Act, 1947. The Labour Court by an award dated 24-12-1997 concluded that though the employee was found guilty of the charges leveled against him, he had been without employment for a long period and, therefore, the penalty of withholding backwages could be the appropriate penalty and accordingly directed the reinstatement into

service with continuity of service, but without back wages. In a writ petition filed by the employee, the High Court while sustaining the award directed the employer – A.P.S.R.T.C. to compute the periodical increments that would have been earned by the employee had he been in service during the period he was absent from duty. It further directed to fix wages payable by the employer after his re-instatement by taking into account such notional increments. In an appeal by special leave, the Supreme Court reversed. On an analysis of the applicable service regulations, the Apex court found for a fact that the service regulations clearly disable the claim for grant of increments during periods an employee remains unauthorisedly absent from duty and that such disentitlement to increments was applicable even to situations where there is a direction of the Court for reinstatement with continuity of service. On analysis of the specific facts and rule position, the Apex Court found that the judgment of this court directing grant of notional increments to the employee in the context of an award of the Labour Court directing reinstatement into service with continuity of service, but without backwages is unsustainable. It is in this context that the observations in paragraph No.9 of the judgment of the Apex Court must be construed. Paragraph No.9 of the judgment of the Supreme Court reads as under:

*“9. We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. **In our opinion, the employee after having been held guilty of unauthorized absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorized absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with benefit of continuity in service.**”(emphasis)*

It is axiomatic that the judgment of a court must not be construed, as are the words of a Statute. The principles enunciated in judicial precedents are often based on the specific factual context on which

the principle is expressed. It would be impermissible to construe the judgment of the Supreme Court in *Narsa Goud's* case (supra) as expounding a principle that in every case of illegal termination or dismissal from service, the employee so dismissed or removed is disentitled to claim either backwages or notional increments. There could be instances where the degree of illegality in the order of termination is of such magnitude as to render the termination *non-est*. For instance, the termination being by an incompetent authority, the termination being in gross and manifest violation of principles of natural justice. To hold that in every case of illegal termination, as a rule of law, an employee is disentitled to the benefits that otherwise accrue during such illegal termination would lead to deification of illegal conduct of public authorities.

In the circumstances and for the above reasons, this court is unable to accept the plea of the respondents, that the observations of the Supreme Court in paragraph No.9 of the judgment in *Narsa Goud's* case (supra) enunciate an absolute principle of disentitlement of all benefits to an employee for the period he was out of service despite the termination from service having been declared invalid by the court. The adjudication of the appropriate benefits that an employee is entitled to during such termination would have to depend upon the facts and circumstances of each case, an evaluation which includes the assessment of the degree of illegality in the termination, the promptitude with which the employee approaches for relief and the need to maintain the delicate balance between the illegal conduct of public authorities vis-à-vis the damage to the public exchequer and other cognate areas of public interest. The plenitude of judicial discretion in this area ought not to be circumscribed by an inflexible dogma. The observations of the Supreme Court were not intended to be so.

In the facts and circumstances of the case, as the termination of the service of the petitioner by the respondents Corporation in a departmental inquiry was found illegal on account of the petitioner's acquittal in criminal case on merits, the termination was held illegal on

account of the preceding departmental inquiry itself being illegal. This is not a case of the petitioner having been terminated on account of unauthorized absence. The decision in *Narsagoud's* case *supra* does not, therefore, assist the respondents, in the facts and circumstances of the case. The petitioner, on the analysis above, is entitled to relief.

The writ petition is allowed, as prayed for. There shall, however, be no order as to costs.

GODA RAGHURAM, J

Dt. 30-06-2004

Pvks/*

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on the Wednesday, the thirtieth day of June, two thousand and four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Chairman and Managing Director, APSRTC, Musheerabad, Hyderabad
2. The Regional Manager, APSRTC, Adilabad Region, Adilabad
- 3 The Depot Manager, APSRTC Bus Depot, Adilabad , District Adilabad

2.2CD copies